IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 3854 of 2007(H)

PETITIONER:

M/S.ASIATIC EXPORT ENTERPRISES
KILIKOLLUR, KOLLAM, REP. BY ITS
PARTNER P. BHARATHAN PILLAI.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS:
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1. THE DEPUTY COMMISSIONER (APPEALS)
COMMERCIAL TAXES, KOLLAM.

2. THE ASSISTANT COMMISSIONER
(ASSESSMENT) COMMERCIAL TAXES, SPECIAL CIRCLE,
KOLLAM.

3. THE INSPECTING ASSISTANT COMMISSIONER
COMMERCIAL TAXES, KOLLAM.

BY GOVT. PLEADER SRI.MOHAMMED RAFIQ.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO.3854 OF 2007-H

JUDGMENT

The petitioner has filed Ext.P3 appeal against Ext.P2 order of assessment of sales tax for the assessment year 2003-04. It is also submitted that substantial portion of the tax due under the said order has already been remitted. Even then, notwithstanding the pendency of the appeal, now Ext.P4 revenue recovery notice has been issued. Hence this Writ Petition, challenging Exts.P2 and P4. The petitioner also prays for a direction to the appellate authority to pass final orders on Ext.P3.

2. Since Ext.P2 is under challenge before the appellate authority, the challenge of the same under Article 226 of the Constitution of India is not maintainable. The petitioner has not moved the appellate authority and obtained stay of the impugned assessment. So, there is nothing wrong with the revenue recovery proceedings initiated by issuing Ext.P4, as the pendency of an appeal will not operate as stay. The 1st respondent will endeavour to dispose of Ext.P3 appeal, if it is received and pending, without affecting the priority of other cases. Subject to that direction, the Writ Petition is dismissed. But, the dismissal of this writ petition will not stand

in the way of the petitioner moving the appellate authority for appropriate interim relief.

7th March, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/